

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

CHARLIE CLIFTON TAYLOR

PLAINTIFF

v.

CIVIL ACTION NO.: 1:13-cv-510-KS-MTP

BALYDIA SHANKS

DEFENDANT

REPORT AND RECOMMENDATION

THIS MATTER is before the Court on Defendant's Motion to Dismiss [24]. Having considered the Motion, the undersigned is of the opinion that it should be denied without prejudice.

In her Motion, Defendant Balydia Shanks contends that Plaintiff did not exhaust his administrative remedies. Defendant points to the fact that Plaintiff, in his Complaint, marked "No" as an answer to the question "Have you completed the Administrative Remedy Program regarding the claims presented in this complaint?" *See* Complaint [1] at 3. However, Plaintiff also attached to his Complaint an Administrative Remedy Program ("ARP") second step response form indicating that Plaintiff may have exhausted his administrative remedies.

Defendant informed the Court that she is not employed by the Mississippi Department of Corrections and does not have access to Plaintiff's ARP files. Based on the current record, the Court cannot determine whether Plaintiff exhausted his administrative remedies. The Court may revisit this issue on appropriate motion if the evidence suggests that Plaintiff did not exhaust his administrative remedies. Under the current record, however, this Motion should be denied without prejudice.

Based on the foregoing, the undersigned recommends that Defendant's Motion to

Dismiss [24] be DENIED without prejudice.

NOTICE OF RIGHT TO OBJECT

In accordance with the rules and 28 U.S.C. § 636(b)(1), any party within fourteen days after being served a copy of this recommendation, may serve and file written objections to the recommendations, with a copy to the judge, the magistrate judge and the opposing party. The District Judge at the time may accept, reject or modify in whole or part, the recommendations of the Magistrate Judge, or may receive further evidence or recommit the matter to this Court with instructions. The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendations contained within this report and recommendation within fourteen days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions accepted by the district court to which the party has not objected. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

THIS the 18th day of July, 2014.

s/ Michael T. Parker

United States Magistrate Judge